

Farm Credit Administration

§616.6100

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§616.600 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Interests in leases* means ownership interests in any aspect of a lease transaction, including, but not limited to, servicing rights.

(b) *Lease* means any contractual obligation to own and lease, or lease with the option to purchase, equipment or facilities used in the operations of persons eligible to borrow under part 613 of this chapter.

(c) *Sale with recourse* means a sale of a lease or an interest in a lease in which the seller:

(1) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(2) Has an obligation to make payments to any party resulting from:

(i) Default on the lease by the lessee or guarantor or any other deficiencies in the lessee's performance;

(ii) Changes in the market value of the assets after transfer;

(iii) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(iv) Any other cause, except that the retention of servicing rights alone shall not constitute recourse.

§616.6100 Purchase and sale of interests in leases.

(a) *Authority to buy interests in leases.* A Farm Credit System institution may buy leases and interests in leases.

(b) *Policies.* Each Farm Credit System institution that sells or buys interests in leases must do so only under a policy adopted by its board of directors that addresses the following:

(1) The types of leases in which the institution may buy or sell an interest and the types of interests which may be bought or sold;

(2) The underwriting standards for the purchase of interests in leases;

(3) Such limits on the aggregate lease payments and residual amount of interests in leases that the institution may buy from a single institution as are necessary to diversify risk, and such limits on the aggregate amounts the institution may buy from all institutions as are necessary to assure that service to the territory is not impeded;

(4) Identification and reporting of leases in which interests are sold or bought;

(5) Requirements for securing from the selling lessor in a timely manner adequate financial and other information about the lessee needed to make an independent judgment; and

(6) Any limits or conditions to which sales or purchases are subject that the board considers appropriate, including arbitration.

(c) *Purchase and sale agreements.* Each agreement to buy or sell an interest in a lease must, at a minimum:

(1) Identify the particular lease(s) to be covered by the agreement;

(2) Provide for the transfer of lessee information on a timely and continuing basis;

(3) Identify the nature of the interest(s) sold or bought;

(4) Specify the rights and obligations of the parties and the terms and conditions of the sale;

(5) Contain any terms necessary for the appropriate administration of the lease, including lease servicing and

monitoring of the servicer and authorization and conditions for action in the event of lessee distress or default;

(6) Provide for a method of resolution of disagreements arising under the agreement;

(7) Specify whether the contract is assignable by either party; and

(8) In the case of lease transactions through agents, comply with § 614.4325(h) of this chapter, reading the term “lease” or “leases” in place of the term “loan” or “loans,” as applicable.

(d) *Independent judgment.* Each institution that buys an interest in a lease must make a judgment on the payment ability of the lessee that is independent of the originating or lead lessor and any intermediary seller or broker. This must occur before the purchase of the interest and before any servicing action that alters the terms of the original agreement. The institution must not delegate such judgment to any person(s) not employed by the institution. A Farm Credit System institution that buys a lease or any interest in a lease may use information, such as appraisals or inspections, provided by the originating or lead lessor, or any intermediary seller or broker; however, the buying Farm Credit System institution must independently evaluate such information when exercising its judgment. The independent judgment must be documented by a payment analysis that considers factors set forth in § 616.6300. The payment analysis must consider such financial and other lessee information as would be required by a prudent lessor and must include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions must adopt procedures to ensure the interests of their respective shareholders are protected in participation between such institutions.

(e) *Sales with recourse.* When a lease or interest in a lease is sold with recourse:

(1) For the purpose of determining the lending and leasing limit in subpart J of part 614 of this chapter, the lease must be considered, to the extent of the recourse or guaranty, a lease by the buyer to the seller, and in addition, the seller must aggregate the lease

with other obligations of the lessee; and

(2) The lease subject to the recourse agreement must be considered an asset sold with recourse for the purpose of computing capital ratios.

(f) *Similar entity lease transactions.* The provisions of § 613.3300 of this chapter that apply to interests in loans made to similar entities apply to interests in leases made to similar entities. In applying these provisions, the term “loan” shall be read to include the term “lease” and the term “principal amount” shall be read to include the term “lease amount.”

§ 616.6200 Out-of-territory leasing.

A System institution may make leases outside its chartered territory.

§ 616.6300 Leasing policies, procedures, and underwriting standards.

The board of each institution engaged in lease underwriting must adopt a written policy (or policies). Management, at the direction of the board, must develop procedures that reflect lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity must comply with the lending policies and loan underwriting requirements in § 614.4150 of this chapter. An institution engaged in the making, buying, or syndicating of leases also must adopt written policies and procedures that address the additional risks associated with leasing. Written policies and procedures must address the following, if applicable:

(a) Appropriateness of the lease amount, purpose, and terms and conditions, including the residual value established at the inception of the lease;

(b) Process for estimating the leased asset’s market value during the lease term;

(c) Types of equipment and facilities the institution will lease;

(d) Remarketing of leased property and associated risks;

(e) Property tax and sales tax reporting;

(f) Title and ownership of leased assets;

(g) Title and licensing for motor vehicles;